

The Indian Law Reports

APPELLATE CIVIL

Before Prem Chand Pandit, J.

JOHRI MAL ALIAS JOHRI,—*Appellant.*

versus

SUKHAN LAL AND OTHERS,—*Respondents*

Regular Second Appeal No. 1189 of 1965.

April 3, 1967.

Code of Civil Procedure Act (V of 1908)—Order III Rule 4 and Order XXIII Rule 3—Name of pleader mentioned in power of attorney which is not signed by him in token of acceptance—Pleader appearing in the suit on various dates—Whether can be said to have been properly appointed—Decree passed in accordance with the statements of parties and their counsel—Whether legal.

Held, that if the name of the pleader appears in the body of the power of attorney which has not been signed by him in token of acceptance but the pleader appeared in the suit on various dates, his appointment as a pleader is perfectly valid and legal and he has the authority to act on behalf of his client. The pleader is deemed to have accepted his appointment by his conduct in appearing for his client in the trial Court.

Held, that under the provisions of Order XXIII rule 3 of the Code of Civil Procedure when the Court is satisfied that a suit pending before it has been adjusted wholly or in part by some lawful compromise, it shall order that compromise to be recorded and then pass a decree in accordance therewith. In the present case, both the parties made a joint statement on solemn affirmation saying that the matter had been compromised between them on the terms mentioned in the said statement. The statement was recorded by the trial court and was signed by the parties and their counsel and thereafter, at that very time, the court recorded the order that the parties had compromised their dispute and had made statements before him which had been countersigned by their counsel. In view of the terms of the compromise the decree was then passed. There was no illegality committed by the trial Court and there had been a substantial compliance with the provisions of Order XXIII rule 3, C.P.C. It is not necessary that the Court should first make a formal order that the said compromise be recorded and thereafter record it.

Second Appeal from the decree of the Court of Shri Fauja Singh Gill, Additional District Judge, Rohtak at Gurgaon, dated the 28th day of April, 1965, affirming that of Shri Chuni Lal Kalra, Sub-Judge, 1st Class, Palwal, dated the 31st July, 1964, granting the plaintiff a decree in terms of the compromise arrived at by the parties, for redemption of the mortgaged property against the defendant on payment of Rs. 2,600 by the 1st of February, 1965, and further ordering that the defendant would not dispose of the Malba already lying there or which may accrue during that interval and directing that on the payment of that amount the defendant would hand over possession of the suit property, failing which the suit of the plaintiff would be deemed to have been dismissed. The lower appellate court left the parties to bear their own costs.

JINENDRA KUMAR AND P. S. THAKUR, ADVOCATES, for the Appellant.

P. C. JAIN, ADVOCATE, for the Respondents.

JUDGEMENT

PANDIT, J.—Johri Mal, appellant, had brought a suit against Sukhan Lal and five others, respondents 1-6, for possession of a house by redemption on payment of Rs. 1,850. Respondents 2—6 had sold their mortgagee rights to Sukhan Lal, respondent No. 1, by a registered deed with the result that the main contesting defendant was respondent No. 1. During the pendency of the suit, on 31st of July, 1964, a compromise was effected between the parties as a result of which a joint statement, on solemn affirmation, was made by Johri Mal and Raghunath Das, son and *Mukhtar-i-Khas* of Sukhan Lal, before the trial court. This statement was also signed by their respective advocates, namely Mr. Lakhnupal and Mr. Kirpa Ram. Thereafter, the court recorded the following order on that very date:—

“The parties have compromised the dispute and made statements above, which are countersigned by the counsel for the parties. In view of these statements a decree for redemption for the mortgaged property is passed in favour of the plaintiff against the defendant on payment of Rs. 2,600 by the 1st of February, 1965. The defendant shall not, however, dispose of the *malba* already lying there or which may accrue during this interval. On the payment of this amount the defendant shall hand over possession of the suit property. If the plaintiff does not make payment by that date, the defendant shall be

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entitled to retain possession thereof, and the suit shall be deemed to have been dismissed."

Against this order, Johri Mal filed an appeal before the Additional District Judge, Gurgaon, who dismissed the same. That led to the filing of the present second appeal. The first contention raised by the learned counsel for the appellant was that the compromise in the instant case was bad in law inasmuch as the provisions of Order 23, Rule 3, Code of Civil Procedure, had not been properly complied with. The Court should have first made a formal order that the said compromise be recorded, but this was not done. Reliance in this connection was placed, mainly on *Shrimati Sabitri Thakurain v. E. A. Savi and others* (1), *Sardar and Paban v. Bhupendra Nath Nag* (2).

There is no substance in this contention. Under the provisions of Order 23, Rule 3, C.P.C. when the court is satisfied that a suit pending before it has been adjusted wholly or in part by some lawful compromise, it shall order that compromise to be recorded and then pass a decree in accordance therewith. In the present case, both the parties made a joint statement on solemn affirmation saying that the matter had been compromised between them on the terms mentioned in the said statement. The statement was recorded by the trial court and was signed by the parties and their counsel and thereafter at that very time, the court recorded the order that the parties had compromised their dispute and had made statements before him which had been countersigned by their counsel. In view of the terms of the compromise the decree was then passed. There was, in my opinion, no illegality committed by the trial court and there had been a substantial compliance with the provisions of order 23, rule 3 CPC. The rulings relied on by the learned counsel have no application because they are clearly distinguishable on facts.

The next contention of the learned counsel was that Raghunath Das was not the *Mukhtar-i-khas* of his father Sukhan Lal. This again is incorrect. The record shows that the written statement in this case was filed by Raghunath Dass as the *Mukhtar-i-khas* of his father Sukhan Lal. The special power of attorney in his favour was also produced in this case.

(1) A.I.R. 1927 Patna 354.

(2) I.L.R. (1916) 43 Calcutta 85.

Lastly, it was submitted that Mr. Kirpa Ram was not the advocate of Sukhan Lal. This objection again is pointless. In the first place, when the *Mukhtar-i-khas* had himself signed the statement, there was no necessity for the advocate to sign the same. Secondly, as pointed out by the learned Additional District Judge, there was on the record a power of attorney dated 3rd of February, 1964, by which Sukhan Lal had engaged both Mr. Kirpa Ram and Mr. Mahi Pal Singh as his counsel. In the body of this document, the names of both the advocates are written, But, it appears that at the bottom, by an accidental omission Mr. Kirpa Ram, Advocate, had forgotten to put his signature, because it was only signed by Mr. Mahipal Singh. However, Mr. Kirpa Ram had been appearing in the case on behalf of Sukhan Lal on other hearings as well and that showed that he was the counsel for respondent No. 1. There is no manner of doubt that by his conduct in appearing for the respondent in the trial Court, he had accepted the power of attorney given to him.

No other point was argued.

It is note-worthy that Sukhan Lal or any other respondent is not raising any objection to the compromise. It is only Johri Mal who seems to be dis-satisfied with the said compromise and wants to back out of it by taking one objection or the other. Undoubtedly, he had made the statement on solemn affirmation in the presence of his counsel who also had signed the same. It does not now lie in his mouth to try to get out of the said compromise by taking useless objections.

The result is that this appeal fails and is dismissed with costs.

B.R.T.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

MESSRS JAI GOPAL & CO.,—*Petitioner*

versus

THE ASSESSING AUTHORITY, AMRITSAR,—*Respondent*

Civil Writ No. 2352 of 1964.

April 3, 1967

Punjab General Sales Tax Act (XLVI of 1948)—S. 10—Punjab General Sales Tax Rules (1949)—Rule 20—Dealer—Whether can be required to file a return relating to a broken part of the quarter.